



## **THE PEACE CORPS**

### **22 CFR Part 306**

## **THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

### **45 CFR Part 1225**

### **RIN 0420-AA27**

### **Volunteer Discrimination Complaint Process**

**AGENCIES:** The Peace Corps and The Corporation for National and Community Service (CNCS).

**ACTION:** Joint proposed rule.

**SUMMARY:** This joint document amends the regulations that the Peace Corps and Corporation for National and Community Service (CNCS) follow to process complaints of discrimination by volunteers and applicants for volunteer service. The current regulations were promulgated in January 1981 when the Peace Corps and domestic volunteer programs (such as VISTA, now subsumed by CNCS) were one entity under an organization called ACTION. At that time, Congress extended the statutory protections of the Civil Rights Act and other laws to such volunteers. Congress has since separated out the two agencies and has expressly removed the Peace Corps. As such, the regulations need to be updated.

**DATES:** This document is applicable [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the Peace Corps and CNCS will publish a timely withdrawal of the document in the Federal Register.

**ADDRESSES:** You may send comments, identified by RIN 0420-AA27, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- E-mail: [policy@peacecorps.gov](mailto:policy@peacecorps.gov). Include RIN 0420-AA27 in the subject line of the message.
- Mail: The Peace Corps / The Office of General Counsel / 1275 First Street NE / Washington, DC 20526.

Instructions: All submissions received must include the receiving agency's name, which is the Peace Corps, designate the Office of General Counsel, and note the Regulatory Information Number (RIN) for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** David van Hoogstraten, (202) 692-2150, [dvanhoogstraten@peacecorps.gov](mailto:dvanhoogstraten@peacecorps.gov).

**Background:** The Peace Corps is an independent government agency that was legislatively established in 1961 by the Peace Corps Act. Separately, in 1973, the Domestic Volunteer Service Act (Pub. L. 93-113) established domestic volunteer programs, such as VISTA, and joined the Peace Corps with those domestic volunteer programs under an umbrella organization called ACTION.

In 1979, the Domestic Volunteer Service Act Amendments (Pub. L. 96-143) extended the nondiscrimination policies and authorities set forth in Title VII of the Civil Rights Act of 1964, Title V of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 to applicants for enrollment and volunteers serving under both the Peace Corps Act and the Domestic Volunteer Service Act. That section further directed that any remedies available to individuals under such laws, other than the right to appeal to the Equal Employment Opportunity Commission, would be available to such applicants or volunteers. Congress, in extending the non-discrimination protections to the volunteers, required that the Directors of ACTION and Peace Corps prescribe regulations specifically tailored to the circumstances of such volunteers. This mandate led to the

promulgation of the rules in 45 CFR 1225, which applied to both Peace Corps volunteers and domestic volunteers (and applicants for such volunteer service) who filed complaints of discrimination. At that time, a section was also added to the Peace Corps' regulations, at 22 CFR 300, et seq, entitled *Volunteer Discrimination Complaint Procedure*, which only contains a cross reference to 45 CFR 1225 (see 22 CFR 306).

In December of 1981, Congress again separated the Peace Corps from domestic volunteers, and removed it from the umbrella of ACTION (Pub. L. 97-113). In the Domestic Volunteer Service Act Amendment of 1984, Pub. L. 98-288, sec. 30a (codified at 42 U.S.C. 5057), Congress expressly removed the Peace Corps from being subject to Title VII of the Civil Rights Act and the other non-discrimination statutes. However, conforming amendments by ACTION (now subsumed by the Corporation for National and Community Service) were not made to 45 CFR 1225 to remove references to the Peace Corps.

At this time, the Peace Corps seeks to update its regulations to reflect the current statutory framework applicable to Peace Corps volunteers and applicants, by striking references to the Peace Corps from 45 CFR 1225, and adding a revised non-discrimination process into the Peace Corps regulations in 22 CFR 306.

**SUPPLEMENTARY INFORMATION:** The Peace Corps Act (22 U.S.C. 2501, et seq.) establishes the Peace Corps and sets forth the requirements for program operations, including those for selecting volunteers. The Act states that “except as provided in [the Act], volunteers shall not be deemed officers or employees or otherwise in the service or employment of, or holding office under, the United States for any purpose. *In carrying out this subsection, there shall be no discrimination against any person on account of race, sex, creed, or color.*”

Because Peace Corps volunteers are not considered federal employees or otherwise in the service or employment of the United States for any purpose not specified

in the Peace Corps Act, the regulations implementing Section 717 of the Civil Rights Act of 1964 (and other nondiscrimination policies and authorities), and the right to appeal to the Equal Employment Opportunity Commission, do not apply to volunteers.

These regulations were first promulgated to ensure that volunteers had a process to make complaints regarding discriminatory conduct proscribed by the Peace Corps Act and the Peace Corps' policy. The regulations are now being updated and revised to reflect current best practices.

The proposed rule would revise and update rules for volunteer discrimination complaint processing, which were last published in the Federal Register on January 6, 1981, and entered into effect on January 6, 1981, and currently appear at 45 CFR Part 1225, which is cross referenced in 22 CFR Part 306.

### **Request for Comments**

The Peace Corps invites public comment on all aspects of this proposed rule and will take those comments into account before publishing a final rule. The proposed rule makes adjustments for clarification, efficiency, and streamlines the language of some procedural provisions and makes the following key changes:

#### **22 CFR 306**

- (1) *Purpose.* §306.1 is a revision of 45 CFR 1225.1. It changes and expands the list of protected classes that can be considered as a basis for filing claims of discrimination, and includes the Peace Corps Inspector General as an additional avenue for filing claims of discrimination.
- (2) *Policy.* §306.2 is a revision of 45 CFR 1225.2. It amends the language setting forth how the Peace Corps will respond to cases in which discrimination was found and adds that Peace Corps staff members are required to participate in investigations.

- (3) *Definitions.* §306.3 is a revision of 45 CFR 1225.3. It expands the definition of “volunteer” to include persons who were sworn in as volunteers but are no longer in service; conforms changes to titles such as the Director of the Office of Civil Rights and Diversity (instead of EO Director); adds definitions for words used in the regulations, such as “counselor” and “filing date”; and revises other definitions to reflect current roles and practices.
- (4) *Coverage.* §306.4 is a revision of 45 CFR 1225.4. It addresses the consolidation of claims under a single complaint, as well as complaints that fall under separate Peace Corps administrative processes. The revision clarifies that these regulations do not create any new rights of action or jurisdiction before U.S. courts.
- (5) *Representation.* §306.5 is a revision of 45 CFR 1225.5. It abridges the current section on representation and removes language that is no longer pertinent.
- (6) *Freedom from Retaliation.* §306.6 is a restatement of 45 CFR 1225.6 with no significant changes other than changing the word reprisal to retaliation and consolidating a number of behaviors under the term retaliation.
- (7) *Review of Allegations of Retaliation.* §306.7 is a restatement of 45 CFR 1225.7, and it additionally grants the OCRD Director discretion in consolidating claims.
- (8) *Pre-complaint procedure.* §306.8 replaces the current 45 CFR 1225.8. It is a step-by-step explanation of the process followed when an individual files an initial complaint of discrimination, which is also known as the “counseling” or “informal” stage, and is geared toward reaching a mutual resolution between the complainant and the agency. The new section specifies timetables to be followed, responsibilities of specific agency officers, and notifications that need to be provided to the individual and to relevant staff.

- (9) *Complaint Procedure*. §306.9 replaces the current 45 CFR 1225.9. It is a step-by-step explanation of the process to be followed when an individual files a formal complaint of discrimination, which involves an investigation and a final agency decision. The new section specifies standards for acceptance and dismissal, timetables to be followed, responsibilities of specific agency officers, and notifications that need to be provided to the individual and to relevant staff. It also outlines the timeframe and process for appealing a proposed final agency decision to the Director of the Peace Corps.
- (10) *Corrective Action*. §306.10 is a restatement of 45 CFR 1225.10 with no changes other than removing a provision about attorney's fees. Sections 1225.11 through 1225.21 were stricken in their entirety.

## **45 CFR 1225**

The proposed edits are technical in nature. For example, they remove any references to the Peace Corps, the Director of Peace Corps, or the Peace Corps Act throughout the section, and replace references to ACTION with Corporation for Community and National Service (CNCS) and AmeriCorps and SeniorCorps.

### **Regulatory Certifications**

#### **Executive Orders 12866 and 13563—Regulatory Review**

This regulation has been drafted and reviewed in accordance with E.O. 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and in accordance with E.O. 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation, and the Office of Management and Budget, Office of Information and Regulatory Affairs has determined it to be non-significant within the meaning of E.O. 12866. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in E.O. 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of

the E.O. of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017), supplemented by OMB’s Memorandum titled “Implementing E.O. 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs.’”

**Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))**

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

**Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)**

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

**Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)**

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

**Federalism (Executive Order 13132)**

This regulatory action does not have Federalism implications, as set forth in E.O. 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects**

**22 CFR Part 306 and 45 CFR Part 1225**

Volunteer Discrimination Complaint Procedures.

**Title 22**

**Peace Corps**

For the reasons set out in the preamble, the Peace Corps proposes to revise 22 CFR Part 306 as follows:

## **PART 306 — VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE**

Secs.

### **Subpart A. General Provisions**

§ 306.1 Purpose.

§ 306.2 Policy.

§ 306.3 Definitions.

§ 306.4 Coverage.

§ 306.5 Representation.

§ 306.6 Freedom from Retaliation.

§ 306.7 Review of Allegations of Retaliation.

### **Subpart B. Processing Individual Complaints of Discrimination**

§ 306.8 Pre-complaint Procedure.

§ 306.9 Complaint Procedure.

§ 306.10 Corrective Action.

**Authority:** 22 U.S.C. 2501 *et seq.*

## **PART 306 - Volunteer Discrimination Complaint Procedure**

### **Subpart A - General Provisions**

#### **§306.1 Purpose.**

The purpose of this Part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination (including harassment) based on race, color, religion, sex, national origin, age (40 or over), disability or other bases provided for in applicable statutes, regulations or the Peace Corps Manual or history of participation in the Peace Corps discrimination complaint process which arise in connection with the recruitment, selection, placement, service, or termination of applicants, Trainees, or Volunteers. In addition, any Peace Corps applicant, Trainee, or Volunteer may submit an allegation of discrimination to the Peace Corps Office of



Inspector General at any time, and the allegation will be processed in accordance with policy and procedures of the Office of Inspector General.

**§306.2 Policy.**

(a) In the recruitment, selection, placement, service, and termination of Peace Corps Trainees and Volunteers, it is the policy of the Peace Corps to provide equal opportunity for all persons and to prohibit discrimination based on race, color, religion, sex, national origin, age (40 or over), disability, and other bases provided for in applicable statutes, regulations or the Peace Corps Manual, or history of participation in the Peace Corps discrimination complaint process.

(b) It is the policy of the Peace Corps, upon a determination that such prohibited discrimination has occurred, to take appropriate corrective action to remedy the discrimination and to prevent its recurrence.

(c) It is the policy of the Peace Corps that all agency staff must cooperate in the investigation of a complaint. Volunteers and Trainees are strongly encouraged to cooperate.

**§306.3 Definitions.**

Unless the context requires otherwise, in this Part:

(a) “Director” means the Director of the Peace Corps.

(b) “OCRD Director” means the Director of the Peace Corps’ Office of Civil Rights and Diversity.

(c) “Prohibited discrimination” means discrimination (including harassment) on the basis of race, color, religion, sex, national origin, age (40 or over), disability, or other bases provided for in applicable statutes, regulations or the Peace Corps Manual, or history of participation in the Peace Corps discrimination complaint process.

(d) “Applicant” means a person who has submitted a completed application required for consideration of eligibility for Peace Corps Volunteer service. “Applicant”

may also mean a person who alleges that the actions of agency personnel precluded them from submitting such an application or any other information reasonably required by the appropriate personnel as necessary for a determination of the individual's eligibility for Volunteer service.

(e) “Trainee” means a person who has accepted an invitation issued by the Peace Corps and has registered for Peace Corps staging.

(f) “Volunteer” means a person who has taken the oath of service and been sworn in for Peace Corps service, whether or not this person is still in Peace Corps service.

(g) “Complainant” means an aggrieved applicant, Trainee, or Volunteer who believes they have been subject to prohibited discrimination and files a formal complaint.

(h) “Complaint” means a written statement signed by a Complainant alleging prohibited discrimination and submitted to the OCRD Director, as described in section 306.9(a) of this Part.

(i) “File(d) Date” means the date a Complaint is received by the appropriate agency official.

(j) “Counselor” means an official designated by the OCRD Director to perform an informal inquiry focused on possible resolution as detailed in this Part.

(k) “Final Agency Decision (FAD)” means the Peace Corps’ final written determination on a Complaint.

#### **§306.4 Coverage.**

(a) Except as set out below, these procedures apply to all Peace Corps applicants, Trainees, and Volunteers.

(1) To the extent that a Trainee or Volunteer makes a complaint containing an allegation of prohibited discrimination in connection with conduct that constitutes sexual misconduct as defined in the Peace Corps’ policy on Volunteer sexual misconduct.

(2) When an applicant, Trainee, or Volunteer makes a complaint which contains

an allegation of prohibited discrimination in connection with an early termination or other administrative procedure of the agency, only the allegation of prohibited discrimination will be processed under this Part. At the discretion of the OCRD Director, additional allegations or claims material to the complaint may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated will continue to be processed under those procedures pursuant to which they were originally raised.

(3) Complaints of retaliation in connection with allegations made under the Peace Corps Volunteer Confidentiality Protection policy shall be handled in accordance with that policy.

(b) The OCRD Director has the discretion to consolidate complaints from different applicants, Trainees, or Volunteers that allege common underlying facts and similar claims.

(c) These regulations do not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Coverage under these rules does not constitute acceptance by the agency or the United States Government of jurisdiction for judicial review.

#### **§306.5 Representation.**

Any aggrieved party may be assisted in all stages of these procedures under this Part by an attorney or non-staff representative of his or her own choosing at his or her own expense. An aggrieved party must immediately inform the agency if representation is retained.

#### **§306.6 Freedom from Retaliation.**

Aggrieved parties, their representatives, and witnesses will be free from retaliation at any stage in the presentation and processing of a complaint under this

section, including the counseling stage described in 306.8 of this Part, or any time thereafter.

#### **§306.7 Review of Allegations of Retaliation.**

(a) An aggrieved party, his or her representative, or a witness who alleges retaliation in connection with the presentation of a complaint under this Part, may, if covered by this Part, request in writing that the allegation be reviewed as an act of discrimination subject to the procedures described in Subpart B or that the allegation be considered as an issue in the complaint at hand. The determination whether to consider the complaint in the same or a separate proceeding is within the discretion of the OCRD Director.

#### **Subpart B - Processing Individual Complaints of Discrimination**

##### **§306.8 Pre-complaint procedure.**

(a) Any applicant, Trainee or Volunteer who believes that he or she has been subject to prohibited discrimination must bring such allegations to the attention of OCRD within 60 days of the alleged discrimination, at which point a Counselor will be assigned to attempt to resolve them.

(b) The pre-complaint procedure is intended to determine whether the concerns of the aggrieved party can be resolved to the mutual satisfaction of the aggrieved party and the agency without the filing of a formal complaint.

(c) The Counselor serves as a neutral party, to gather a limited amount of information from the aggrieved party about his or her allegations, explain to the aggrieved party his or her rights, obtain information to determine the applicability of this regulation, and where appropriate, attempt an informal resolution among relevant parties.

(d) The amount of information that the Counselor gathers from the agency is limited to information needed to reach an informal resolution to the mutual satisfaction of the aggrieved party and the agency.

(e) The Counselor will keep a written record of his or her activities, which will be submitted to the OCRD Director as a Counselor's report.

(f) To the extent necessary to reach an informal resolution, the Counselor may reveal to relevant agency officials the identity of the aggrieved party. In the event that the aggrieved party requests that the Counselor not share his or her identity with agency officials, the Counselor will not reveal the identity of the aggrieved party (or information that could be used to easily identify the aggrieved party) outside of OCRD. If appropriate, the Counselor should explain to the aggrieved party that an informal resolution and/or the scope of relief available may be limited as a result of the request for anonymity.

(g) The pre-complaint process should be completed within 30 days, but the OCRD Director may extend the period upon request of the aggrieved party or the agency for good cause shown.

(h) If, after inquiry and counseling, an informal resolution to the allegation is not reached, the Counselor will notify the aggrieved party in writing of the right to file a formal complaint of discrimination with the OCRD Director within 30 calendar days of the aggrieved party's receipt of the notice.

(i) As an alternative to assignment of a Counselor as described above, the aggrieved party may ask for Alternative Dispute Resolution as set out in the Peace Corps' policy. In such a case, the parties have 90 days to attempt in good faith to reach an informal resolution of the allegation. At any time during the course of Alternative Dispute Resolution, the aggrieved party or the Responsible Management Official (or their Supervisor), in consultation with the Office of the General Counsel, may terminate those proceedings.

#### **§306.9 Complaint Procedure.**

(a) An applicant, Trainee or Volunteer who wishes to file a formal complaint must do so within 30 days of receiving the notice set out in 306.8(g) above, by filing a signed complaint in writing with OCRD. A complaint must set forth specifically:

(1) A detailed description, including names and dates, if possible, of the actions of the Peace Corps officials or other persons which resulted in the alleged prohibited discrimination;

(2) The manner in which the Peace Corps' action directly affected the complainant; and

(3) The relief sought.

(b) A complaint that does not conform to the above requirements will nevertheless be deemed to have been received by the OCRD, and the complainant will be notified of the steps necessary to correct the deficiencies of the complaint. The complainant will have 30 days from receipt of notification that the complaint is defective to submit an amended complaint.

(c) The OCRD Director must accept a complaint if the process set forth above has been followed, and the complaint states a covered claim of prohibited discrimination. The OCRD Director may extend the time limits set out above:

(1) When the complainant shows that they were not notified of the time limits and were not otherwise aware of them;

(2) The complainant shows that they were prevented by circumstances beyond their control from submitting the matter in a timely fashion; or

(3) For other reasons considered sufficient by the OCRD Director.

(d) At any time during the complaint procedure, the OCRD Director may dismiss a complaint based on the aggrieved party's failure to prosecute the complaint. However, this action may be taken only after:

(1) The OCRD Director has made a written request, including notice of the proposed dismissal, that the Complainant provide certain information or otherwise proceed with the complaint; and

(2) 30 days have elapsed since the sending of the request.

If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in 306.8 or is dismissed, the OCRD Director will inform the aggrieved party in writing of this FAD, advising that the Peace Corps will take no further action.

(e) Upon acceptance of the complaint and receipt of the Counselor's report, the OCRD Director will provide for a prompt impartial investigation of the complaint. The OCRD may employ a Peace Corps employee or external party to conduct the investigation. If a Peace Corps employee is selected to investigate the complaint, the person assigned to investigate the complaint may not occupy a position in the agency which is, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation will include a review of the circumstances under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute, discrimination against the complainant.

(f) Agency officials responsible for providing information relating to the complaint to the investigator will be provided such information about the complaint as they may need in order to respond appropriately. For example, responding agency officials who have a need to know may be provided with information including the identity of the complainant and statements of the alleged discriminatory basis and adverse action.

(g) In cases where sensitive and/or protected information about applicants, Trainees, or Volunteers (other than the complainant) is requested or involved, agency

officials may only disclose such information that is directly relevant to claim(s) being investigated, and must ensure that such information is handled in such a manner that the privacy of the applicants, Trainees, or Volunteers in question is fully protected, in accordance with the Peace Corps' policy on confidentiality of Volunteer information.

(h) Every agency official responsible for providing information relating to the complaint to the investigator may at any point consult the Office of the General Counsel and/or his or her supervisor, unless the supervisor is alleged to have been involved in the conduct that is the subject of the complaint. Agency officials responsible for providing information to the investigator shall only provide information based on personal knowledge, and should not seek to align or conform his or her statement with that of another responding agency official.

(i) The investigator will compile a report of investigation (ROI) and forward the ROI to the OCRD Director. The OCRD Director will arrange for preparation of a draft FAD, which will be in writing, state the reasons underlying the decision, recommend corrective action if and as appropriate, and advise the complainant of the right to appeal the recommended FAD to the Peace Corps Director, or designee. To the extent feasible, this will be completed within 120 days of the filing of the complaint. However, the OCRD Director has discretion to extend the period.

(j) The OCRD Director will issue the proposed FAD to the complainant with a copy of the ROI.

(k) Within ten calendar days of receipt of such proposed FAD, the complainant may submit his or her appeal of the proposed disposition to the Peace Corps Director, or designee.

(l) The Peace Corps Director, or designee, will, to the extent feasible, decide the issue within 45 days of the date of receipt of the appeal. The claimant will be informed in



writing of the decision and its basis and advised that it is the FAD regarding the complaint.

(m) Where a complainant does not submit a timely appeal pursuant to (k) above, the OCRD Director will issue the proposed FAD as the FAD.

(n) The OCRD Director will inform relevant management officials as to whether or not prohibited discrimination was found in the FAD.

#### **§306.10 Corrective Action.**

When the agency's FAD states that the aggrieved party has been subjected to prohibited discrimination, the following corrective actions may be taken:

(a) Selection as a trainee for an otherwise qualified complainant found to have been denied selection based on prohibited discrimination.

(b) Reinstatement to Volunteer service for a complainant found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a terminated Volunteer will be placed in the same position previously held. However, reinstatement to the specific country of prior service, or to the specific position previously held is contingent on programmatic considerations, including but not limited to the continued availability of the position or program in that country, and acceptance by the host country of such placement. If the same position is deemed to be no longer available, the aggrieved party will be offered reenrollment in a position in as similar as possible circumstances to the position previously held, or will be given interrupted service status. A reenrollment may require a medical clearance and/or other clearances, and both additional training and an additional two year commitment to Volunteer service.

(c) Such other relief as may be deemed appropriate by the Peace Corps.

#### **Title 45**

#### **Corporation for National Community Service**

For the reasons set out in the preamble, the Corporation for National Community Service proposes to add 45 CFR part 1225 to read as follows:

**Part 1225—MEMBER AND VOLUNTEER DISCRIMINATION COMPLAINT  
PROCEDURE**

Secs.

Subpart A. General Provisions

§1225.1 Purpose.

§1225.2 Policy.

§1225.3 Definitions.

§1225.4 Coverage.

§1225.5 Representation.

§1225.6 Freedom from Reprisal.

§1225.7 Review of Allegations of Reprisal.

Subpart B. Processing Individual Complaints of Discrimination

§1225.8 Precomplaint Procedure.

§1225.9 Complaint Procedure.

§1225.10 Corrective Action.

§1225.11 Amount of Attorney Fees.

Subpart C. Processing Class Complaints of Discrimination

§1225.12 Precomplaint Procedure

§1225.13 Acceptance, Rejection or Cancellation of a Complaint

§1225.14 Consolidation of Complaints

§1225.15 Notification and Opting Out

§1225.16 Investigation and Adjustment of Complaint

§1225.17 Agency Decision

§1225.18 Notification of Class Members of Decision

§1225.19 Corrective Action

§1225.20 Claim Appeals

§1225.21 Judicial Review

**Authority:** 42 U.S.C. 5057(d), 12635(d), and 12651(c).

## **PART 1225 – Member and Volunteer Discrimination Complaint Procedure**

### **Subpart A - General Provisions**

#### **§1225.1 Purpose.**

The purpose of this part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination based on race, color, national origin, religion, age, sex, disability or political affiliation, which arise in connection with the recruitment, selection, placement, service, or termination of AmeriCorps and AmeriCorps Seniors applicants, candidates, Members and Volunteers for part time and full time service, as appropriate.

#### **§1225.2 Policy.**

It is the policy of the Corporation for National and Community Service (CNCS) to provide equal opportunity in all its national service programs for all persons and to prohibit discrimination based on race, color, national origin, religion, age, sex, disability or political affiliation in the recruitment, selection, placement, service, and termination of AmeriCorps and AmeriCorps Seniors applicants, candidates, Members and Volunteers. It is the policy of CNCS, upon determining that such prohibited discrimination has occurred, to take all necessary corrective action to remedy the discrimination, and to prevent its recurrence.

#### **§1225.3 Definitions.**

Unless the context requires otherwise, in this Part:

(a) "CEO" means the Chief Executive Officer of CNCS. The term shall also refer to any designee of the CEO.

(b) "EEOP Director" means the Director of the Equal Employment Opportunity Program of CNCS. The term shall also refer to any designee of the EEOP Director.

(c) "Illegal discrimination" means discrimination on the basis of race, color, national origin, religion, age, sex, disability or political affiliation as defined in Title VI of the Civil Rights Act of 1964 (42 U.S.C.2000e et seq.); Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791, et seq.); the Age Discrimination Act of 1975 (42 U.S.C 6101, et seq.), Section 175 of the National and Community Service Act of 1990, as amended, and Section 5057 of the Domestic Volunteer Service Act of 1973, as amended. Further clarification of the scope of matters covered by this definition may be obtained by referring to the following regulations: Sex Discrimination: 29 CFR Part 1604; Religious Discrimination: 29 CFR Part 1605; National Origin Discrimination: 29 CFR Part 1606; Age Discrimination: 45 CFR Part 90; Disability Discrimination: 29 CFR 1630.

(d) "Applicant" means a person who has submitted a completed application required for consideration of eligibility for CNCS national service as a Member or Volunteer. "Applicant" may also mean a person who alleges that the actions of recipient or subrecipient organization staff, or agency personnel precluded him or her from submitting such an application or any other information reasonably required by CNCS as necessary for a determination of the individual's eligibility for national service.

(e) "Candidate" means a person who has accepted an offer to commence service as a Member or Volunteer but has not yet enrolled for service in a CNCS national service program.

(f) "AmeriCorps Member" means a person who serves in a national service position for which a Segal AmeriCorps Education Award could be provided.

(g) "AmeriCorps Seniors Volunteer" means a person who serves as a volunteer through a program funded under Title II of the DVSA, including the Retired Senior

Volunteer Program, the Foster Grandparent Program, and the Senior Companion Program.

(h) "Complaint" means a written statement signed by the complainant and submitted to the EEOP Director. A complaint shall set forth specifically and in detail:

(1) A description of the management policy or practice during the application stage as an applicant, during the candidacy stage as a Candidate, or during the service stage as a Member or Volunteer, if any, giving rise to the complaint;

(2) A detailed description including names and dates, if possible, of the actions of CNCS, recipients or subrecipients of CNCS assistance or resources, or the officials of those recipients or subrecipients, which resulted in the alleged illegal discrimination;

(3) The manner in which the action of CNCS, or the CNCS recipient or subrecipient, directly affected the complainant; and

(4) The relief sought.

A complaint shall be deemed filed on the date it is received by the appropriate agency official. When a complaint does not conform with the above definition, it shall nevertheless be accepted. The complainant shall be notified of the steps necessary to correct the deficiencies of the complaint. The complainant shall have 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint.

(i) "Counselor" means an official designated by the EEOP Director to perform the functions of conciliation as detailed in this part.

(j) "Agent" means a class member who acts for the class during the processing of a class complaint. In order to be accepted as the agent for a class complaint, in addition to those requirements of a complaint found in 1225.3(g) of this part, the complaint must meet the requirements for a class complaint as found in Subpart C of these regulations.

#### **§1225.4 Coverage.**

(a) These procedures apply to all CNCS national service applicants, candidates, Members and Volunteers throughout their term of service with CNCS, or with recipients and subrecipients of CNCS assistance or resources. When an applicant, candidate, Member or Volunteer makes a complaint which contains an allegation of illegal discrimination in connection with an action that would be otherwise be processed under a grievance, early termination, or other administrative system of the agency, the allegation of illegal discrimination shall be processed under this Part. At the discretion of the EEOP Director, any other issues raised may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated shall continue to be processed under those procedures in which they were originally raised.

(b) The submission of class complaints alleging illegal discrimination as defined above will be handled in accordance with the procedure outlined in Subpart C.

#### **§1225.5 Representation.**

Any aggrieved party may be represented and assisted in all stages of these procedures by an attorney or representative of his or her own choosing. An aggrieved party must immediately inform the agency if counsel is retained. Attorney fees or other appropriate relief may be awarded in the following circumstances; (a) Informal adjustment of a complaint. An informal adjustment of a complaint may include an award of attorney fees or other relief deemed appropriate by the EEOP Director. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on their amount, this issue may be appealed to the CEO, or their designee, in the manner detailed in 1225.11 of this Part. (b) Final Agency Decision. When discrimination is found, the CEO, or their designee, shall advise the complainant that any request for attorney fees or costs must be documented and submitted for review within 20 calendar days after his or her receipt of the final agency decision. The amount of such awards shall be determined under 1225.11. In the unusual

situation in which it is determined not to award attorney fees or other costs to a prevailing complainant, the CEO, or their designee, in his or her final decision shall set forth the specific reasons thereof.

#### **§1225.6 Freedom from Reprisal.**

Aggrieved parties, their representatives, and witnesses will be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage described in 1225.8 of this part, or any time thereafter.

#### **§1225.7 Review of Allegations of Reprisal.**

An aggrieved party, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this part, may if covered by this part, request in writing that the allegation be reviewed as an individual complaint of discrimination subject to the procedures described in Subpart B or that the allegation be considered as an issue in the complaint at hand.

### **Subpart B - Processing Individual Complaints of Discrimination**

#### **§1225.8 Precomplaint Procedure.**

(a) An aggrieved person who believes that he or she has been subject to illegal discrimination shall bring such allegations to the attention of the appropriate Counselor within 30 days of the alleged discrimination to attempt to resolve them. Aggrieved applicants, candidates, Members, and Volunteers applying for, or enrolled in programs operated by CNCS, or by recipients or subrecipients of CNCS assistance or resources, shall direct their allegations to the designated Counselor.

(b) Upon receipt of the allegation, the Counselor or designee shall make whatever inquiry is deemed necessary into the facts alleged by the aggrieved party and shall counsel the aggrieved party for the purpose of attempting an informal resolution

agreeable to all parties. The Counselor will keep a written record of his or her activities which will be submitted to the EEOP Director if a formal complaint concerning the matter is filed.

(c) If after such inquiry and counseling an informal resolution to the allegation is not reached, the Counselor shall notify the aggrieved party in writing of the right to file a complaint of discrimination with the EEOP Director within 15 calendar days of the aggrieved party's receipt of the notice.

(d) The Counselor shall not reveal the identity of the aggrieved party who has come to him or her for consultation, except when authorized to do so by the aggrieved party. However, the identity of the aggrieved party may be revealed once the agency has accepted a complaint of discrimination from the aggrieved party.

#### **§1225.9 Complaint Procedure.**

(a) The EEOP Director must accept a complaint if the process set forth above has followed, and the complaint states a charge of illegal discrimination. The agency will extend the time limits set herein (a) when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or (b) the complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter in a timely fashion, or (c) for other reasons considered sufficiently by the agency. At any time during the complaint procedure, the EEOP Director may cancel a complaint because of failure of the aggrieved party to prosecute the complaint. If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in 1225.8 or is cancelled, the EEOP Director shall inform the aggrieved party in writing of this Final Agency Decision: that CNCS will take no further action; and of the right, to file a civil action as described in 1225.21 of this part.

(b) Upon acceptance of the complaint and receipt of the Counselor's report, the EEOP Director shall provide for the prompt investigation of the complaint. Whenever



possible, the person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute discrimination against the complainant. The investigator shall compile an investigative file, which includes a summary of the investigation, recommended findings of fact and a recommended resolution of the complaint. The investigator shall forward the investigative file to the EEOP Director and shall provide the complainant with a copy.

(c) The EEOP Director shall review the complaint file including any additional statements provided by the complainant, make findings of fact, and shall offer an adjustment of the complaint if the facts support the complaint. If the proposed adjustment is agreeable to all parties, the terms of the adjustment shall be reduced to writing, signed by both parties, and made part of the complaint file. A copy of the terms of the adjustment shall be provided to the complainant. If the proposed adjustment of the complaint is not acceptable to the complainant, or the EEOP Director determines that such an offer is inappropriate, the EEOP Director shall forward the complaint file with a written notification of the findings of facts, and his or her recommendations of the proposed disposition of the complaint to the CEO or their designee. The aggrieved party shall receive a copy of the notification and recommendation and shall be advised of the right to appeal the recommended disposition to the CEO or their designee. Within ten (10) calendar days of receipt of such notice the complainant may submit his or her appeal of the recommended disposition to the CEO or their designee.

(d) *Appeal to CEO.* If no timely notice of appeal is received from the aggrieved party, the CEO or their designee may adopt the proposed disposition as the Final Agency Decision. If the aggrieved party appeals, the CEO, or a designee who has been delegated

authority to issue such a decision, after review of the total complaint file, shall issue a decision to the aggrieved party. The decision of the CEO, or their designee, shall be in writing, state the reasons underlying the decision, shall be the Final Agency Decision, shall inform the aggrieved party of the right to file a civil action as described in 1225.21 of this part, and, if appropriate, designate the procedure to be followed for the award of attorney fees or costs.

**§1225.10 Corrective Action.**

When it has been determined by Final Agency Decision that the aggrieved party has been subjected to illegal discrimination, the following corrective actions may be taken:

(a) Selection as a Member or Volunteer for aggrieved parties found to have been denied selection based on prohibited discrimination.

(b) Reappointment to national service for aggrieved parties found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a Member or Volunteer will be placed in the same position previously held. However, reassignment to the specific position previously held is contingent on several programmatic considerations such as the continued availability of the position. If the same position is deemed to be no longer available, the aggrieved party will be offered a reassignment to a position in as similar circumstances to the position previously held, or to resign from service for reasons beyond his or her control. Such a reassignment may require both additional training and an additional commitment to national service.

(c) Provision for reasonable attorney fees and other costs incurred by the aggrieved party.

(d) Such other relief as may be deemed appropriate by the CEO or their designee.

**§1225.11 Amount of Attorney Fees.**

(a) When a decision of the agency provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the CEO or their designee. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the CEO or their designee shall issue a decision determining the amount of attorney fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(b) The amount of attorney's fees shall be made in accordance with the following standards: the time and labor required, the novelty and difficulty of the questions, the skills requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.

### **Subpart C - Processing Class Complaints of Discrimination**

#### **§1225.12 Precomplaint Procedure.**

An applicant, candidate, Member or Volunteer who believes that he or she is among a group of present or former CNCS national service applicants, candidates,

Members or Volunteers, who have been illegally discriminated against and who wants to be an agent for the class shall follow those precomplaint procedures outlined in 1225.8 of this part.

**§1225.13 Acceptance, Rejection or Cancellation of a Complaint.**

(a) Upon receipt of a class complaint, the Counselor's report, and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the EEOP Director shall review the file to determine whether to accept or reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation which is identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites.

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are representative of the claims of the class;

(iv) The agent of the class, or his or her representative will fairly and adequately protect the interest of the class.

(b) If an allegation is not included in the Counselor's report, the EEOP Director shall afford the agent 15 calendar days to explain whether the matter was discussed and if

not, why he or she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the EEOP Director may decide to reject the allegation. If the explanation is not satisfactory, the EEOP Director may require further counseling of the agent.

(c) If an allegation lacks specificity and detail, or if it was not submitted in writing or not signed by the agent, the EEOP Director shall afford the agent 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint. The EEOP Director may decide that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the EEOP Director must advise the agent how to proceed on an individual or class basis concerning these allegations.

(d) The EEOP Director may extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his or her representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limit.

(e) When appropriate, the EEOP Director may determine that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section shall be construed and applied accordingly.

(f) The EEOP Director may cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after:

(1) The EEOP Director has provided the agent a written request, including notice of proposed cancellation, that he or she provide certain information or otherwise proceed with the complaint; and

(2) within 30 days of his or her receipt of the request.

(g) An agent must be informed by the EEOP Director in a request under paragraphs (b) or (c) of this section that his or her complaint may be rejected if the information is not provided.

#### **§1225.14 Consolidation of Complaints.**

The EEOP Director may consolidate the complaint if it involves the same or sufficiently similar allegations as those contained in a previous complaint filed on behalf of the same class which is pending in the agency or which had been resolved or decided by the agency.

#### **§1225.15 Notification and Opting Out.**

(a) Upon acceptance of a class complaint, the agency, within 30 calendar days, shall use reasonable means such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain:

(1) The name of the agency or organizational segment thereof, its location and the date of acceptance of the complaint:

(2) a description of the issues accepted as part of the class complaint;

(3) an explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and

(4) an explanation of the binding nature of the final decision or resolution of the complaint.

#### **§1225.16 Investigation and Adjustment of Complaint.**

The complaint shall be processed promptly after it has been accepted. Once a class complaint has been accepted, the procedure outlined in 1225.9 of this part shall apply.

#### **§1225.17 Agency Decision.**

(a) If an adjustment of the complaint cannot be made, the procedures outlined in 1225.9 shall be followed by the EEOP Director except that any notice required to be sent to the aggrieved party shall be sent to the agent of the class or his or her representative.

(b) The Final Agency Decision on a class complaint shall be binding on all members of the class.

**§1225.18 Notification of Class Members of Decision.**

Class members shall be notified by the agency of the final agency decision and corrective action, if any, using at the minimum, the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. Notice shall be given by the Agency within ten (10) calendar days of the transmittal of its decision to the agent.

**§1225.19 Corrective Action.**

(a) When discrimination is found. CNCS, or the recipient or subrecipient of CNCS assistance or resources, as appropriate, must take appropriate action to eliminate or modify the policy or practice out of which such discrimination arose, and provide individual corrective action to the agent and other class members in accordance with 1225.10 of this part.

(b) When discrimination is found and a class member believes that but for that discrimination he or she would have been accepted as a Member of Volunteer or received some other volunteer service benefit, the class member may file a written claim with the EEOP Director within thirty (30) calendar days of notification by the agency of its decision.

(c) The claim must include a specific, detailed statement showing that the claimant is a class member who was affected by an action or matter resulting from the

discriminatory policy or practice which arose not more than 30 days preceding the filing of the class complaint.

(d) The Agency shall attempt to resolve the claim within sixty (60) calendar days after the date the claim was postmarked, or in the absence of a postmark, within sixty (60) calendar days after the date it was received by the EEOP Director.

**§1225.20 Claim Appeals.**

(a) If the EEOP Director and claimant do not agree that the claimant is a member of the class, or upon the relief to which the claimant is entitled, the EEOP Director shall refer the claim, with recommendations concerning it, to the CEO or their designee for a Final Agency Decision and shall so notify the claimant. The class member may submit written evidence to the CEO or their designee concerning his or her status as a member of the class. Such evidence must be submitted no later than ten (10) calendar days after receipt of referral.

(b) The CEO or their designee shall decide the issue within thirty (30) days of the date of referral by the EEOP Director. The claimant shall be informed in writing of the decision and its basis and that it will be the Final Agency Decision of the issue.

**§1225.21 Judicial Review.**

(a) An applicant, candidate, Member or Volunteer is authorized to file a civil action in an appropriate U.S. District Court:

(1) Within thirty (30) calendar days of his or her receipt of the notice of final action taken by the agency; or

(2) After one hundred eighty (180) calendar days from the date of filing a formal discrimination complaint with the agency if there has been no final agency action.

Dated: November 20, 2020.

**Helen Serassio,**  
*Acting General Counsel of Corporation for National and Community Service.*



**Timothy Noelker,**  
*General Counsel of the Peace Corps.*

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